TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 503.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

JOHN BITTY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

Filed November 29, 1907.

(20906)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 503.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

JOHN BITTY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

INDEX.

	Original.	Print.
Petition for writ of error	1	1
Writ of error	2	1
Clerk's certificate and return	3	2
Indictment	5	3
Extracts from minutes	7	3
Arraignment ordered	7	3
Plea withdrawn and demurrer entered	7	3
Bail ordered	7	3
Argument and submission of demurrer	7	4
Opinion by Hough, J	8	4
Order for judgment	13	7
Judgment	14	8
Recognizance to appear and answer	15	8
Assignment of errors	18	9
Citation	19	10
Acceptance of service of citation	20	10

1 United States Circuit Court, Southern District of New York.

UNITED STATES,
vs.
JOHN BITTY.

And now comes the United States, by its attorney, Henry L. Stimson, and complains that in the record and proceedings had in this cause and in the judgment sustaining the defendant's demurrer to the indictment herein, manifest error has happened.

Wherefore said plaintiff prays for the allowance of a writ of error and for such other orders and process as may cause the same to be corrected by the Supreme Court of the United States.

Dated this 25th day of September, 1907.

HENRY L. STIMSON,
United States Attorney,
Attorney for Plaintiff.

Allowed:

E. H. LACOMBE,
United States Circuit Judge.

(Endorsed:) United States Supreme Court. United States of America. United States vs. John Bitty. Petition for writ of error. Henry L. Stimson, U. S. attorney, attorney for plaintiff. Due service of a copy of the within paper is hereby admitted this 25th Sept., 1907. Edward A. Alexander, atty. for deft. U. S. Circuit Court, Southern District N. Y. Filed Sept. 24, 1907. John A. Shields, clerk.

2 UNITED STATES OF AMERICA, *ss.*

The President of the United States of America, to the judges of the Circuit Court of the United States, for the Southern District of New York, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court, before you, or some of you, between The United States, plaintiff, and John Bitty, defendant, a manifest error hath happened, to the great damage of the said plaintiff as is said and appears by its complaint: We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, together with this writ, so that you have the same at the said place, before the justices aforesaid, on the 22d day of October, 1907, that the record and proceedings aforesaid being

inspected, the said justices of the Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States ought to be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 25th day of Septem-
3 ber, in the year of our Lord one thousand nine hundred and seven and of the Independence of the United States the one hundred and thirty-second.

[L. S.]

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

The foregoing writ is hereby allowed.

E. H. LACOMBE,
U. S. Circuit Judge.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, by virtue of the foregoing writ of error, and in obedience thereto, do hereby certify, that the following pages, numbered from one to twenty, inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the cause of The United States, plaintiff in error vs. John Bitty, defendant in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, in the Second Circuit, this 18th day of November, in the year of our Lord one thousand nine hundred and seven, and of the Independence of the United States the one hundred and thirty-second.

[SEAL.]

JOHN A. SHIELDS,
Clerk.

4 (Indorsed:) Writ of error. Henry L. Stimson, U. S. attorney, attorney for plaintiff in error. Due service of a copy of the within paper is hereby admitted this 25th Sept., 1907. Edward A. Alexander, atty. for deft. in error. U. S. Circuit Court, Southern District N. Y. Filed Sept. 23, 1907. John A. Shields, clerk.

5 Circuit court of the United States of America for the Southern District of New York in the Second Circuit.

At a stated term of the Circuit Court of the United States of America for the Southern District of New York, in the Second Circuit, begun and held in the city of New York, within and for the district

and circuit aforesaid, on the 3rd Wednesday of June, in the year of our Lord one thousand nine hundred and seven, and continued by adjournment to and including the seventh day of August, in the year of our Lord one thousand nine hundred and seven.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

The jurors of the United States of America within and for the district and circuit aforesaid, on their oath present that John Bitty, late of the city and county of New York, in the district and circuit aforesaid, yeoman, heretofore, to wit, on the fourth day of August, in the year of our Lord one thousand nine hundred and seven, at the southern district of New York, and within the jurisdiction of this court, did unlawfully, willfully, and feloniously import into the United States of America from a foreign country, to wit, England, a certain alien woman, to wit, one Violet Sterling, alias Miss Bitty, for an immoral purpose as hereinafter recited: and it was the purpose of the said John Bitty, in bringing and importing the said alien into the United States, as aforesaid, that she should live with him as his concubine, against the peace of the United States and their dignity and contrary to the form of the statute in such case made and provided.

HENRY L. STIMSON, *U. S. Attorney.*

6 (Endorsed:) U. S. circuit court. The United States of America vs. John Bitty. Indictment. Unlawfully bringing into the U. S. alien woman for immoral purposes. Sec. 3, immigration act, Feb. 20, 1907. Henry L. Stimson, U. S. attorney. A true bill, George E. Mead, foreman. U. S. Circuit Court Southern District N. Y. Filed Aug. 7, 1907. John A. Shields, clerk.

1907, Aug. 8. Deft. pleads not guilty. Bail $5,000. Aug. 8. Bench warrant issued.

Aug. 9. Deft. withdraws plea of not guilty and demurs to indictment. Bail reduced to $2,500.

Aug. 10. Filed opinion, Hough, J. Demurrer sustained.

7 FRIDAY, *August 9th, 1907.*

The court meets and is opened by proclamation.

Present: The Hon. George C. Holt, judge.

UNITED STATES, *vs.* JOHN BITTY. } 1—138.

On motion of U. S. attorney ordered arraignment.

Defendant having been duly arraigned withdraws plea of not guilty and enters demurrer. Bail ordered reduced to $2,500.

WEDNESDAY, *September 4th, 1907.*

The court meets and is opened by proclamation.
Present: Hon. Chas. M. Hough, judge.

UNITED STATES,
vs.
JOHN BITTY. } Doc. 1—138.

Argument of demurrer.
Edward Alexander, for defendant.
Thos. Thacher, asst. U. S. attorney for Government.
Submitted.

8 Circuit Court of the United States, Southern District of New York.

UNITED STATES OF AMERICA,
against
JOHN BITTY. } On demurrer to indictment under sec. 3 of the immigration act of Feb. 20, 1907.

E. E. Alexander, esq., for demurrer.
Henry L. Stimson, esq., U. S. attorney, opposed.

HOUGH, D. J.

The indictment demurred to alleges that Bitty did "feloniously import into the United States of America from a foreign country, to wit, England, a certain alien woman * * * for an immoral purpose, * * * and it was the purpose of the said John Bitty in bringing and importing the said alien into the United States as aforesaid that she shall live with him as his concubine."

The act under which this indictment is found (commonly known as the immigration act of 1907) declares that "Whosoever shall, directly or indirectly, import or attempt to import into the United States any alien woman or girl for the purpose of prostitution or for any other immoral purpose, or whoever shall hold or attempt to hold any alien woman or girl for any such purpose in pursuance of such illegal importation, or whoever shall keep, maintain, control, support, or harbor in any house or other place, for the purpose of prostitution or for any other immoral purpose, any alien woman or girl within three years after she shall have entered the United States," shall be deemed guilty of a felony and may be punished up to five years' imprisonment and $5,000 fine.

9 The section just quoted therefore creates three distinct offenses, each punishable as a felony, viz:

(a) The importation of a woman for the purpose of prostitution or for any other immoral purpose;

(b) The holding of such woman in pursuance of such illegal importation, and

(c) The maintenance, supporting, or harboring in any house or other place for the purpose of prostitution or for any other immoral purpose any alien woman within three years after she shall have entered the country.

In plain language, this defendant is charged with having either brought his mistress into the United States or with having brought here a woman who, so far as his desires go, shall be his mistress, if she is not already.

He is thus accused of the first offence enumerated in the third section of the statute under consideration and the indictment therefore must stand or fall upon an interpretation of the words "or for any other immoral purpose."

I adopt the definition of prostitution given in Comonwealth vs. Cook, 12 Met., 93, at 97; i. e., "The act of permitting illicit intercourse for hire, an indiscriminate intercourse—what is deemed public prostitution."

It may be, as the court remarked in the case just cited, that this defendant is guilty of open violation of the divine law and of grossly immoral acts, so that such a case is not the most favorable for a dispassionate consideration of questions of law, the decision of which involves the question whether the party defendant shall be punished, or discharged as not guilty of any offence cognizable by the statute.

It is, however, necessary to apply to this statute, as to any other, the ordinary rules of construction concerning which the discussion at bar has not revealed any substantial difference of opinion between opposing counsel.

It may be admitted that the immigration act of 1907 is in its general scheme remedial; and it is not denied that it is the duty of the court to give to each intelligible word of the statute its exact and precise meaning according to common understanding of the intent of the legislature, so far as ascertainable from legal sources; and that intent, if expressed in apt language, must be enforced as long as the statute is in operation though the result be cruel or ridiculous.

So far as this statute is concerned I have been directed to no indication of legislative intent other than the language of the statute itself, except the report of the committee of the House of Represenatives on Immigration made to the 59th Congress at its first session (No. 4912), wherein it is stated that the scope of section 3 of this statute is extended beyond that of the corresponding section of the act of 1903 "so far as it relates to the immigration of prostitutes in order effectively to prohibit undesirable practices alleged to have grown up."

This I take to mean that the words "or for any other immoral purpose" have been added to the word "prostitution" in order to prevent undesirable practices alleged to have grown up in relation to the immigration of prostitutes.

Upon general principles the added words must be understood as meaning "for any other like immoral purpose," so that the question really becomes whether a man who brings his mistress into this coun-

try is committing an act ejusdem generis with bringing in a prostitute.

Concubinage is the act upon the part of the woman of cohabiting with a man without ceremonial marriage, or consent and intent, good at common law. A discussion of the difference between this
11 status and that of the prostitute would be both needless and nauseating; it suffices to say that from any point of view, historical, social, or legal, I do not think that the mistress is near enough to the prostitute to be included by general words in a statute directed against the latter unfortunate class.

Considering the statute from a point of view perhaps more technical, it is, of course, an act highly penal and to be given in favor of the liberty of the citizen the narrowest construction consistent with the plain significance of its words. Many other statutes for several hundred years have contained similar clauses, and though it is certainly too late in the day to look with approval upon the doctrine that a statute making the "stealing of sheep or other cattle" a felony is too loosely expressed to warrant a conviction for stealing any other animal than a sheep (1 Black. Comm., 88); yet numerous cases can be cited, such as Ex parte Hill, 3 C. & P., 225, holding that under a statute making it a crime to maim "an ox, cow, heifer, sheep, or other cattle" it was not an offence to commit a like act against a bull; and People vs. Richards, 108 N. Y., 137, holding that under a statute making it burglary to break and enter "any shop, store, booth, tent, warehouse, or other building" one who broke into and entered a tomb or mausoleum was guilty of no crime.

Within the line of decisions, both ancient and modern, illustrated by above citations, I do not think the words "other immoral purpose," when used as modifying the word "prostitution," can be held to include concubinage.

I am the more willing to arrive at this result from observing what would be the effect of a contrary holding as applied to the third offence created by the section under consideration. "Whoever shall keep * * * in any house * * * for the purpose of prosti-
tution, or for any other immoral purpose, any alien woman
12 * * * within three years after she shall have entered the United States" shall be guilty of a felony. In other words, if the offence charged in this indictment be within the act, any man who unwittingly keeps an alien mistress within three years after she enters this country becomes a felon, even though (so far as the language of the statute is concerned) he has no knowledge whatever of her lack of citizenship. The weapon thus put in the hands of degraded women is so dangerous as to justify great insistence upon the penal character of this act and some distrust of its remedial virtues.

It remains to be considered whether any function can be assigned to the words "any other immoral purpose" under the construction of the statute above indicated. It appears to me that sufficient scope

is given for the application of the words by the fact that there are others besides the unfortunate women themselves who are concerned in the trade of prostitution. The procuress, thinly disguised as the keeper of an employment agency, and her female assistants, posing as servants, are figures too sadly familiar to the courts to need enumeration or description. It is to them and their kind that the general language of the act must be applied.

The demurrer is sustained.

C. M. HOUGH, *D. J.*

Sept. 9, 1907.

(Endorsed:) U. S. vs. John Bitty. Opinion Hough, J. U. S. Circuit court, southern district, N. Y. Filed Sep. 10, 1907. John A. Shields, clerk.

13 United States Circuit Court, Southern District of New York.

UNITED STATES
vs.
JOHN BITTY.

An indictment against John Bitty, the defendant above named, having been found and filed by the grand jurors in and for the southern district of New York on the 7th day of August, 1907, and thereafter the defendant having been arraigned and having interposed a demurrer to said indictment on the ninth day of August, 1907, and thereafter Edward A. Alexander having been heard in support of the demurrer, and Thomas D. Thacher, assistant United States attorney, having been heard on behalf of the United States,

Now, upon motion of Edward A. Alexander, attorney for the defendant, it is

Ordered that judgment be entered sustaining the demurrer and dismissing the indictment.

C. M. HOUGH, *U. S. Judge.*

The above is consented to as to form.

EDWARD A. ALEXANDER,
Attorney for Defendant.

(Endorsed:) U. S. Circuit Court, Southern District of New York. The United States vs. John Bitty. Order for judgment. Henry L. Stimson, United States attorney, attorney for U. S. U. S. Circuit Court, southern district, N. Y. Filed Sep. 24, 1907. John A. Shields, clerk.

14 United States Circuit Court, Southern District of New York.

UNITED STATES
vs.
JOHN BITTY.

An indictment against John Bitty, the defendant above named, having been found and filed by the grand jurors of the United States

in and for the Southern District of New York, on the 7th day of August, 1907, and thereafter the defendant having been arraigned and having interposed a demurrer to said indictment, and an order having been entered on the 24th day of September, 1907, sustaining said demurrer.

Now on motion of Edward A. Alexander, attorney for the defendant, it is

Ordered and adjudged that the demurrer is sustained and the indictment dismissed.

Judgment filed this 24th day of Sept., 1907.

JOHN A. SHIELDS, *Clerk.*

The above is hereby consented to.

EDWARD A. ALEXANDER,
Attorney for Defendant.

(Endorsed:) U. S. Circuit Court, Southern District of New York. United States *v.* John Bitty. Judgment sustaining demurrer. Henry L. Stimson, United States attorney, attorney for U. S. U. S. Circuit Court, southern district, N. Y. Filed Sep 24, 1907. John A. Shields, clerk.

15 UNITED STATES OF AMERICA,
Southern District of New York, ss:

Be it remembered, that on this 11th day of September, in the year of our Lord one thousand nine hundred and seven, before me, James Ridgway, one of the commissioners duly appointed by the District Court of the United States of America for the southern district of New York, in the second circuit, to take acknowledgments of bail and affidavits, and also to take deposition of witnesses in civil causes depending in the courts of the United States, pursuant to the provisions of the act of Congress in that behalf, personally came John Bitty and severally acknowledged himself to owe to the United States of America, that is to say, the said John Bitty, the sum of two thousand five hundred dollars, to be levied and made of his goods and chattels, lands and tenements, to the use of the said United States, if default shall be made in the condition following, to wit:

Whereas the said John Bitty has been indicted by the grand jury of the Circuit Court of the United States for the southern district of New York with having, on the 5th day of August, in the year one thousand nine hundred and seven, at the southern district of New York, unlawfully, wilfully, and feloniously imported from a foreign country a certain alien woman for immoral purposes;

And whereas the said John Bitty has been brought before the Hon. Chas. M. Hough, one of the judges of said court, to answer to
16 the said indictment, and the said judge having ordered that the said John Bitty be discharged on giving his own recognizance, pending writ of error, if any, in the sum of two thousand five hundred dollars for his appearance at the next Circuit Court of the United States of America for the southern district of New York, second circuit, to be holden at the United States court building, in

the city of New York, on the second Wednesday of October, in the year one thousand nine hundred and seven, to answer all such matters and things as should be objected against him; and that in default of finding such bail the said John Bitty should stand committed.

Now, therefore, the condition of this recognizance is such that if the said John Bitty shall personally appear at a Circuit Court of the United States of America for the southern district of New York, second circuit, to be holden at the United States court building, in the city of New York, on the second Wednesday of October, in the year of our Lord one thousand nine hundred and seven, at 10 o'clock in the forenoon of that day, and then and there answer all such matters and things as shall be objected against him and abide the order of the court, and not depart the said court without leave, then this recognizance to be void, otherwise to remain in full force and virtue.

Acknowledged before me the day and year first above written.

JOHN BITTY.

JAMES RIDGWAY,
Commissioner of the District Court of the United States for the Southern District of New York.

17 (Endorsed:) U. S. Circuit Court. The United States vs. John Bitty. Recognizance to appear and answer. Henry L. Stimson, U. S. attorney. U. S. Circuit Court, southern district of New York. Filed Sep. 11, 1907. John A. Shields, clerk.

18 United States Supreme Court. United States of America.

UNITED STATES
vs.
JOHN BITTY.

Assignment of error.

And now comes the United States, by Charles F. Bonaparte, Attorney-General of the United States, its attorney, and files the following assignment of error:

I. That the United States Circuit Court in and for the Southern District of New York erred in sustaining the demurrer interposed by the defendant to the indictment filed in this cause by construing section 3 of the act of Congress of February 20, 1907, chapter 1134 (34 Stat. L., 398), so as to hold that the facts stated in said indictment do not constitute a violation of the first and second clauses in said section and said act of Congress.

Wherefore the plaintiff prays that the judgment of said court be reversed and that this cause be remanded for further proceedings before the said court in accordance with law.

CHARLES J. BONAPARTE,
Attorney-General, United States of America,
By HENRY L. STIMSON,
United States Attorney for the Southern District of New York.

(Endorsed:) United States Supreme Court, United States of America. United States vs. John Bitty. Assignment of error. Henry L. Stimson, United States attorney, attorney for plaintiff. U. S. Circuit Court, Southern District of N. Y. Filed Sep. 24, 1907. John A. Shields, clerk.

19 *By the honorable, one of the judges of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit. To John Bitty, greeting:*

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the Capitol in the city of Washington, on the 22d day of October, 1907, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Southern District of New York, wherein the United States is appellant and you are appellee, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the borough of Manhattan, in the city of New York, in the district and circuit above named, this 25 day of September, in the year of our Lord one thousand nine hundred and seven, and of the independence of the United States the one hundred and thirty-second.

E. H. LACOMBE,
Judge of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit.

20 (Indorsed:) Citation. Henry L. Stimson, U. S. attorney, atty. for plaintiff in error. Due service of a copy of the within paper is hereby admitted the 25th Sept., 1907. Edward A. Alexander, atty. for deft. in error. U. S. Circuit Court, Southern District N. Y. Filed Sep. 25, 1907. John A. Shields, clerk.

21 (Indorsed on wrapper:) United States Supreme Court. United States, plaintiff in error vs. John Bitty, defendant in error. Office of the clerk, Supreme Court U. S. Received Nov. 19, 1907.

22 (Indorsement on cover:) File No. 20906. S. New York, C. C. U. S. Term No. 503. The United States, plaintiff in error, vs. John Bitty. Filed November 22d, 1907. File No. 20906. Office of the clerk, Supreme Court U. S. Received Nov. 19, 1907.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1907.

THE UNITED STATES, PLAINTIFF in error, v. JOHN BITTY. } No. 503.

MOTION TO ADVANCE.

John Bitty was indicted in the Circuit Court of the United States for the Southern District of New York on August 7, 1907, charged with having imported into the United States "from a foreign country, to wit, England, a certain alien woman, to wit, one Violet Sterling, alias Miss Bitty, for an immoral purpose as hereinafter recited; and it was the purpose of the said John Bitty in bringing and importing the said alien into the United States, as aforesaid, that she should live with him as his concubine," in violation of section 3 of the immigration act of February 20, 1907 (chap. 1134, 34 Stats., 398). The section of the statute referred to reads as follows:

"Whoever shall, directly or indirectly, import or attempt to import into the United States any alien

21482—07——1

woman or girl for the purpose of prostitution or for any other immoral purpose, shall be deemed guilty of a felony, and may be punished with up to five years' imprisonment and $5,000 fine."

A demurrer filed was sustained by the court, and this writ of error was sued out by the Government under the provisions of the act of March 2, 1907 (35 Stats., 1246).

As this is a criminal case and the first to reach this court in an attempt by the Government under the provisions of the new immigration act to break up what is known as the "white slave" trade, it is important that it should be promptly determined. The Solicitor-General, therefore, in accordance with rule 26, section 3, and the provisions of the criminal appeal act just referred to, moves the court to advance the case on the docket and set it down for hearing on such early day during the term as may be convenient to the court.

Notice of this motion has been served upon opposing counsel and proof of service filed with the clerk.

HENRY M. HOYT,
Solicitor-General.

DECEMBER, 1907.

O